

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES A. SMITH,)	
	Plaintiff,)
		C.A. No. 22-272 Erie
v.)	
)	District Judge Susan Paradise Baxter
CO1 BERRINGER, et al.,)	Magistrate Judge Richard A. Lanzillo
	Defendants.)

MEMORANDUM ORDER

This action was commenced by Plaintiff's filing of a *pro se* civil rights complaint accompanied by a motion for leave to proceed *in forma pauperis* ("ifp motion") [ECF No. 1], on September 21, 2022. This matter was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. §636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On November 7, 2022, Plaintiff filed a motion for temporary restraining order or preliminary injunction alleging that, on November 2, 2022, he was assaulted by 4 or 5 corrections officers because he would not withdraw the present lawsuit [ECF No. 13]. As relief, Plaintiff seeks an Order requiring Defendants to stop retaliating against him.

A videotaped evidentiary hearing on Plaintiff's motion was held before Judge Lanzillo on November 22, 2022, during which Plaintiff provided testimony in support of his motion; however, Plaintiff's testimony regarding the incident in question was lacking clarity because he was reluctant to discuss the incident in the presence of attending corrections officers out of fear of further retaliation (ECF No. 33, hearing transcript, at pp. 3, 7, 20). Immediately after hearing testimony on the motion, Judge Lanzillo issued a Report and Recommendation ("R&R") on the

record recommending that Plaintiff's motion be denied because Plaintiff had failed to demonstrate either a likelihood of success on the merits or a probability of irreparable harm if relief is not granted. [ECF No. 33, at pp. 22-24]. Objections to the R&R were due to be filed by December 9, 2022; however, no objections have been received.

After *de novo* review of Plaintiff's motion and other documents in the case, together with the hearing transcript and report and recommendation contained therein, the following order is entered:

AND NOW, this 13th day of January, 2023;

IT IS HEREBY ORDERED that Plaintiff's motion for a temporary restraining order or preliminary injunction [ECF No. 13] is DENIED. The oral report and recommendation of Magistrate Judge Lanzillo, issued November 22, 2022 [ECF No. 33, at pp. 22-24], is adopted as the opinion of the court.



SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
United States Magistrate Judge